

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CRIMINAL NO. 4:13-cr-00363
	§	
JAMES WAYNE HAM	§	

**DEFENDANT’S AGREED MOTION FOR
BIFURCATION OF COMPETENCY EXAMINATION**

1. The competency hearing in this case is currently scheduled for May 17, 2016.
2. Defendant, JAMES WAYNE HAM, will not be ready by May 17, 2016, for the reasons stated below:

(a) After the evaluations done by the Defense expert, Dr. Gilbert Martinez, and by the Government’s expert at Butner, the Defense arranged with a company, Mindset, to coordinate with UTMB to arrange for a 3T (Tesla) MRI with Diffuse Tensor Imaging (DTI). (Using UTMB for the neuroimaging saves the Government approximately \$2,000). In addition to the neuroimaging data collection, Mindset will provide data analysis and interpretation as well as re-analysis of the MRI conducted at Butner and the corresponding radiology report. The defense and the defense expert, Dr. Martinez, believe that showing Mr. Ham’s brain damage through imaging will help to explain the impact of that damage on his ability to assist counsel. It is the belief of Dr. Martinez that Mr. Ham has substantial deficits and that they impact his ability to engage in important tasks, such as

remembering, responding and observing, which are relevant and necessary to assisting counsel in his defense.

(b) Secondly, as this Honorable Court may know, the funding for our experts has not as yet been approved by the Fifth Circuit. The New Orleans court has requested additional explanation and responses to several questions they had about our approved Southern District budget, which the Defense timely provided. This communication with the Fifth Circuit wherein they questioned our approved budget began approximately one month ago. There has been no response from the Fifth Circuit since we responded to their questions and requests for explanations about our budget. Therefore, we have no money at this time to pay our experts.

Counsel for the Defendant and the United States have conferred on how to proceed as expeditiously as possible. Although the United States does not agree that further testing is necessary or relevant to the competency determination, the government does not object to the requested testing to the extent it can be completed in a timely manner and will not unduly delay this case.

3. The United States agrees that it has the burden of proof as to establishing Mr. Ham is competent, and the United States states that it is ready to proceed with its case-in-chief as to the competency issue, to the extent the Court wishes to hear testimony. At a hearing, the United States expects to call the BOP competency examiners, who prepared the report requested by the Court and who concluded that Mr. Ham was competent to proceed to trial. The United States may call only a limited number of witnesses in addition

to the competency examiner, and in any event, has stated that it expects to be able to complete its case quickly.

4. Accordingly, the Defense and the United States propose that the Court bifurcate the competency hearing so that the United States may proceed with its case on the currently scheduled hearing date of May 17, 2016. Once the United States rests, the parties propose that the Court continue the remainder of the hearing, i.e. the Defendant's evidence and the Government's rebuttal, until June 13, 2016.

Respectfully Submitted,

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AGREED:

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CERTIFICATE OF SERVICE

This is to certify that on April 20, 2016, a true and correct copy of the above and foregoing document was served on Sharad S. Khandelwal with the United States Attorney's Office, Houston Division, via e-mail.

/S/ KATHERINE SCARDINO
KATHERINE SCARDINO